

THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE ATTORNEY GENERAL

NOTICE OF YOUR RIGHTS AS A DOMESTIC WORKER

Under the Domestic Workers Bill of Rights and other applicable state and federal law as required by Massachusetts General Laws, Chapter 149, Section 190

The law requires that your employer give you a **written notice** with basic information about your **RIGHTS as a DOMESTIC WORKER** in Massachusetts.

WHO IS A DOMESTIC WORKER?

A **Domestic Worker** is any individual, whether an independent contractor or an employee, who provides any service of a domestic nature within a household, including housekeeping, cleaning, childcare, cooking, home management, or caring for the elderly or ill.

This law **DOES NOT APPLY** to casual babysitters (those who work, on average, less than 16 hours per week) or personal care attendants (PCAs).

WHO IS AN EMPLOYER?

An **Employer** is any person or entity who hires a domestic worker to provide services within a household, whether the person has an ownership interest in the household or not.

If a domestic worker provides shared services for two or more employers, **each employer** is fully responsible for fulfilling the provisions under the law. For example, in the context of childcare, shared services are commonly referred to as a “nanny share.”

This law **DOES NOT APPLY** to staffing agencies, employment agencies or placement agencies licensed or registered pursuant to M.G.L. c. 140.

Similarly, an individual for whom a personal care attendant provides services under the MassHealth personal care attendant program, pursuant to sections M.G.L. c. 118E, §§ 70-75 is not considered an employer.

YOUR RIGHT TO INFORMATION

When you are hired and before you begin work, your employer must provide you with a **notice** of all applicable state and federal laws that apply to the employment of domestic workers. Copies of this notice in multiple languages are available on the Attorney’s General website at www.mass.gov/ago/dw.

If you work for an employer for **16 hours or more a week**, your employer must **ALSO** provide to you the following information (and keep a record for three years):

- i. the rate of pay, including overtime and additional compensation for added duties or multilingual skills;
- ii. working hours, including meal breaks and other time off;
- iii. any applicable provisions for days of rest, sick days, vacation days, personal days, holidays, transportation, health insurance, severance, yearly raises. This information must include whether or not vacation days, personal days, holidays, severance, transportation costs and health insurance costs are paid or reimbursed;
- iv. any fees or other costs, including costs for meals and lodging;
- v. the responsibilities, including regularity associated with the job;
- vi. the process for raising and addressing grievances and additional compensation if new duties are added;
- vii. the possibility of eligibility to collect worker's compensation if injured on the job;
- viii. if applicable, the circumstances under which your employer will enter your designated living space on the employer's premises;
- ix. what the employer deems as cause for termination;
- x. the requirement to provide you with notice of employment termination; and
- xi. any other benefits your employer gives to you.

PAYROLL RECORDS

You have a right to inspect your employer's payroll records relating to you at reasonable times. These records must be kept for three years and must include: a true and accurate record of your name, address, occupation, the amount paid each pay period, your daily and weekly hours worked, and any deductions, pursuant to M.G.L. c. 151, § 15.

EVALUATIONS

You may ask your employer for a written evaluation of your work performance after three months of employment and once annually after that. While your employer is not required to provide such an evaluation, doing so may aid in ensuring that all job duties are performed at a satisfactory level.

If the employer agrees to provide a written evaluation, you have a right to review and receive a copy of it.

If you disagree with any information in your performance evaluation, you and your employer may mutually agree to make appropriate changes. **If you and your employer cannot agree**, you may submit a written statement to your employer explaining your position, which must be included as part of the personnel file; any statement you submit must be included whenever your performance evaluation is provided to anyone else. M.G.L. c. 149, § 52C.

WAGES

Domestic workers who are employees must be paid **at least** the state minimum wage of \$9.00 per hour.

- On January 1, 2016, the minimum wage will be \$10.00 per hour.
- On January 1, 2017, the minimum wage will be \$11.00 per hour.

For the purposes of the wage and hour laws, any individual performing a service for another is considered an employee, unless a three-part test is met and the individual may be classified as an independent contractor. For more information, please see the Attorney General's advisory regarding employee classification at www.mass.gov/ago/docs/workplace/independent-contractor-advisory.pdf.

You must be paid for all working time, which generally includes all time spent working in a household, on duty or at any location required by your employer, and traveling between work sites.

You must be paid in full in a timely manner – generally within six days of the end of the pay period.

At the end of employment, your employer must pay you all wages earned, including accrued, unused vacation time on the day of termination or on the next regular payday if you quit.

REST TIME

If you work 6 or more hours in a day, you are entitled to a 30 minute unpaid break no later than after 6 consecutive hours of work. You may voluntarily give up this break, but you must be paid for the time worked. **This agreement must be made in writing before you begin work.** If there is no such agreement, your employer must pay you for these periods.

If you work 40 or more hours per week, you also must be given at least 24 consecutive hours of rest each week and at least 48 consecutive hours of rest each month, during which you are entitled to be free from all duties. These periods may be paid or unpaid. You and your employer should agree on this when you are hired.

If you are on duty for less than 24 hours, you must be paid for all meal, rest, and sleeping periods, **unless** you are free to leave the premises and are free from work duties during those times.

If you are required to be on duty for 24 hours or more, you and your employer may agree to exclude some or all meal periods, rest periods, and sleep periods up to 8 hours from your paid working time.

OVERTIME

If you work more than 40 hours in a week, you are entitled to be paid overtime for all hours (or a fraction thereof) worked over 40 that week.

PAY DEDUCTIONS

Employers may only make deductions from your pay if they are required by law (such as withholding taxes or health insurance deductions) or if you have authorized them for your benefit (such as for meals or lodging) and have agreed to them in writing beforehand.

1. DEDUCTIONS REQUIRED OR ALLOWED BY LAW

State and federal tax withholding, wage garnishments such as court ordered child support, and health insurance are all deductions that are required or allowed by law.

2. DEDUCTIONS AUTHORIZED BY YOU, FOR YOUR OWN BENEFIT

These may include deductions for transportation costs, food and beverages, lodging, retirement contributions, and charitable deductions.

Food and Beverages

Your employer may take deductions from your wages for the costs of food and beverages actually provided to you, **but only if the food and beverages are voluntarily and freely chosen by you.**

Deductions for food and beverages may not be more than \$1.50 for breakfast or \$2.25 for lunch or dinner.

Deductions for food and beverage are not permitted if your employer's household dietary restrictions prevent you from storing, preparing, or consuming food or beverages of your preference.

No deductions for food or beverages can exceed the actual costs to your employer.

Lodging

Your employer cannot deduct any lodging costs **if he or she requires you to reside** at your employer's premises or another specific location.

Your employer may only take deductions from your wages for lodging expenses if you voluntarily and freely accept, desire and actually use the lodging, and it meets basic state and local health and sanitary code standards, including heat, potable water, and light.

Your employer may not charge you more than:

- \$35.00 per week for a room occupied by one person.
- \$30.00 per week for a room occupied by two persons.
- \$25.00 per week for a room occupied by three or more persons.

SOCIAL SECURITY AND UNEMPLOYMENT

Social Security and Income Taxes

Employees and self-employed workers earn credits toward eligibility for retirement and disability benefits based on their reported earnings. These benefits are funded by taxes paid by both employers and by workers.

If an employer pays you more than \$1,900.00 per year, they have the following obligations:

- Deduct Social Security and Medicare taxes from those wages;
- Pay these taxes to the Internal Revenue Service (IRS); and
- Report the wages to Social Security.

For more information regarding your employer's obligations on Social Security, contact the Social Security Administration at 1-800-772-1213 or visit www.ssa.gov.

Unemployment Benefits

Employees who lose their jobs through no fault of their own but are able to work, available for work and looking for work may be eligible for unemployment benefits (UI).

Funding for UI benefits comes from quarterly contributions paid by the state's employers. For more information, contact the Department of Unemployment Assistance at 617-626-6800 or visit www.mass.gov/dua.

REST PERIODS, SICK TIME, AND OTHER LEAVE

1. REST PERIODS

If you work 40 or more hours per week, you have a right to 24 consecutive hours off per week and 48 consecutive hours off per month. These periods may either be paid or unpaid. You and your employer should agree on this when you are hired.

If your rest periods are paid, such compensation is treated as earned wages, meaning that your employer cannot refuse to pay for your rest periods once you have earned them.

These days off, or rest periods, are considered **job-protected leave**. This means that your employer cannot punish you in any way for exercising your right to leave the premises or using your free time as you like.

If you freely choose to work during these rest periods, you must make an agreement with your employer **in writing** beforehand. You are entitled to be paid 1.5 times your hourly rate for hours worked during rest periods.

2. SICK TIME, VACATION, AND PERSONAL DAYS

Effective July 1, 2015, employees have the right to earn and use up to 40 hours of sick time in a calendar year to care for your own medical needs or those of your child, spouse, or spouse's parent. You may also use this leave to address the psychological, physical or legal effects of domestic violence. Employers of 11 or more employees must provide paid sick time. For more information, contact the Fair Labor Division of the Attorney General's Office at 617-727-3465 or visit mass.gov/ago.

You and your employer may agree on vacation and personal days, and whether these days will be paid or unpaid, at time of hire in a written employment agreement. A sample employment agreement can be found at www.mass.gov/ago/dw.

3. PARENTAL LEAVE

Female employees may take up to eight weeks of unpaid, job-protected leave for the birth or adoption of a child. Your employer may not require a probationary period of more than three months before you are permitted to use this leave.

Male employees will be eligible for this leave effective July 7, 2015.

4. OTHER LEAVE

If your employer has 50 or more employees, you may have rights to additional types of leave under state and federal law.

- You may have the right to up to 15 days of leave to address the consequences of domestic violence for you or a family member. For questions regarding the Domestic Violence and Abusive Situations Leave Act, contact the Attorney General's Fair Labor division at 617-727-3465
- You may be eligible for leave to attend certain family obligations. For more information on the Small Necessities Leave Act, contact the Attorney General's Fair Labor Division at 617-727-3465
- If you work for a company providing household services, you may be eligible for unpaid, job-protected leave for specified family and medical reasons under the federal Family and Medical Leave Act (FMLA). For more information, contact the U.S. Department of Labor at 617-624-6700 or visit www.dol.gov/whd.

PRIVACY RIGHTS AND FREEDOM OF MOVEMENT

If your employer has telephone or internet services, they are required to provide reasonable access to the telephone and/or internet service without charge to you. If the employer does not have telephone and/or internet services, the employer must provide you with a reasonable opportunity to access telephone and/or internet service at another location at your own expense.

Even if you live in your employer's household, they must respect your right to privacy. Your employer cannot:

- Monitor or record, in any manner, your use of restroom facilities, sleeping or private living quarters, or any activities associated with dressing, undressing, or changing clothes.
- Restrict, interfere with, monitor or record your private communications.
- Hold onto your passport or any of your documents or other personal effects.
- Force you to perform services by:
 - (i) causing or threatening to cause serious harm to you;
 - (ii) physically restraining or threatening to physically restrain you;
 - (iii) abusing or threatening to abuse the law or legal process;
 - (iv) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document;
 - (v) engaging in extortion or any other illegal activity; or
 - (vi) causing or threatening to cause financial harm to you.

SAFETY AND HEALTH

Workers' compensation benefits may be available to some employees to pay for medical treatment for job-related injury or illness and compensate them for lost wages after the first five calendar days of full or partial disability.

Benefits are generally paid through an employer's worker compensation insurance, although workers may still receive benefits even if their employers fail to obtain the required insurance.

For more information, contact the Department of Industrial Accidents at 617-727-4900 or visit www.mass.gov/dia.

PROTECTIONS FOR IMMIGRANT WORKERS

The Massachusetts wage and hour laws, including the Domestic Worker's Bill of Rights, apply to workers **regardless of immigration status, including undocumented workers**. The reporting of a worker to immigration authorities because the worker has complained about violation(s) of his or her rights under the wage and hour laws is considered **retaliation and is subject to penalties under M.G.L. c. 149, §§ 27C & 148A**.

If your employer has more than three employees and you are an immigrant employee with authorization to work in the United States, then you have protections against discrimination based on your immigration status. For more information, contact the federal Department of Justice at 800-255-7688 or visit www.justice.gov/crt/about/osc/.

PROTECTION AGAINST DISCRIMINATION

An employer may not discriminate against domestic workers based on race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, ancestry, age, or disability, or for certain other reasons. Sex discrimination includes sexual harassment and pregnancy discrimination.

Your employer may not base decisions that affect your employment on your submission to unwelcome sexual comments or conduct, and you have the right to be free from sexual comments and conduct that unreasonably interfere with the performance of your work by creating an intimidating, hostile, or offensive work environment. You also have protections against harassment based on sexual orientation, gender identity, race, color, age, religion, national origin or disability.

It is unlawful for your employer to retaliate against you for complaining of practices that you believe to be discriminatory.

YOUR RIGHTS ON TERMINATION

If you reside in your employer's household (or in a location required by your employer) AND you are terminated without cause, your employer must provide you:

- Written notice; **and**
- At least 30 days of lodging, either at your employer's premises or comparable lodging elsewhere, **or**
- Severance pay equal to your average weekly earnings during two weeks of employment.

No advance notice or severance payment is required where the employer provides a good faith allegation, in writing before or at the time of the termination, that the domestic worker has abused, neglected or caused any other harmful conduct against the employer, members of the employer's family or individuals residing in the employer's household.

If a domestic worker resides in the employer's household or in a location required by the employer and termination is for cause relating to conduct other than what is described above, the employer must provide:

- advance written notice; **and**
- a reasonable opportunity to find lodging of no less than 24 hours

YOUR RIGHT AGAINST RETALIATION

Your employer may not penalize or retaliate against you in any way for exercising your rights under Massachusetts wage and hour laws, including the Domestic Workers Bill of Rights.

FILING A COMPLAINT

The Attorney General's Office is responsible for enforcing provisions of the Domestic Workers Bill of Rights pursuant to M.G.L. c. 149, § 190(o).

If you feel that your rights are being or have been violated under this or any other Massachusetts wage and hour law, you may file a complaint with the **Attorney General's Fair Labor Division**.

If you wish to pursue a civil action on behalf of yourself or yourself and other similarly situated workers, known as a **private right of action**, you must first file a complaint with the **Attorney General's Fair Labor Division** and either (1) request and receive a private right of action letter allowing you to file in court directly or (2) wait 90 days after filing with the Attorney General at which time you may file a claim directly in court.

If you feel that you are being or have been discriminated against or harassed you may file a complaint with the **Civil Rights Division in the Attorney General's Office**.

You may file a complaint online, through the mail, or in person.

Online: Visit www.mass.gov/ago/complaints

Through the mail: Call the AG's consumer hotline at 617-727-8400 to request a complaint form, or mail a summary of your situation to:

Office of the Attorney General
1 Ashburton Place
Boston, MA 02108

In Person: Visit one of our offices.

Boston: (617) 727-2200 – 100 Cambridge Street, 11th Floor, Boston, MA 02108

New Bedford: (508) 990-9700 - 105 William Street, # 1, New Bedford, MA 02740

Springfield: (413) 784-1240 - 1350 Main Street, #4, Springfield, MA 01103

Worcester: (508) 792-7600 - 10 Mechanic Street, Suite 301, Worcester, MA 01608